



April 26, 2019

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SENT VIA EMAIL to: aneidhardt@dir.ca.gov

Amalia Neidhardt, MPH, CSP, CIH
Research and Standards
Division of Occupational Safety and Health
California Department of Industrial Relations
1515 Clay Street
Oakland, CA 94612

Dear Ms. Neidhardt,

Southern California Edison (SCE) appreciates the opportunity to provide input and recommendations to the proposed Protection from Wildfire Smoke regulatory language.

While we are aligned in the fundamental desire to protect all workers and provide employees with access to various company documents, we have concerns relating to some of this proposed language. SCE believes there are opportunities to simplify the approach and better align these requirements with current work practices and processes.

Specific comments, suggestions, and requests related to areas of proposed regulation within the latest draft are included below. Recommended insertions are shown in underlined font and proposed deletions are shown using strikethrough font (i.e., underlined and ~~strikethrough~~).

Below are specific recommendations and requests related to the draft language.

Current Draft Language with Proposed Language Revisions:

§5141.1. Protection from Wildfire Smoke.

(a) Scope

(2) The following workplaces and operations are exempt from this section:

(A) Enclosed buildings or structures where the air is filtered by ~~a~~ any mechanical ventilation system and employee exposure to outdoor or unfiltered air is effectively limited.

(B) Enclosed vehicles where the air is filtered by a cabin air filter and employee exposure to outdoor or unfiltered air is effectively limited.

(C) The employer demonstrates that the concentration of PM_{2.5} in the air does not exceed a concentration that corresponds to an AQI of 150.

(D) Firefighters engaged in wildland firefighting.

(E) Emergency response personnel performing lifesaving emergency rescue and evacuation, including personnel providing support services to emergency responders, such as those providing utility services.

(Request moving the exception below from (f) to Scope. It could be listed as an exception or as (F) in this listed sequence of exemptions).

EXCEPTION ~~to subsection (f)(1).~~ The employer will ~~is not~~ be required to implement engineering controls for employees who are exposed to PM_{2.5} corresponding to an AQI exceeding 150 for less than one hour during a shift.

In (a)(2)(A), we recommend clarifying that any mechanical ventilation system qualifies the building or structure for exemption from this standard. This aligns with what we understand to be the intent of the Division in crafting this exemption. Furthermore, this emergency regulation is promulgated based upon the emergency that was declared for outdoor workers. There is not a known emergency in indoor work locations and the regulation should be written to clearly demonstrate that only outdoor workers are considered to be in scope for these requirements.

Additionally, SCE recommends adding clarity around the exemption for emergency response personnel to include those workers who are critically important to wildfire restoration efforts, but are not traditionally considered to be “emergency response personnel.” In fire restoration efforts, these workers are performing tasks that are valuable in both ensuring that firefighters and other emergency response personnel are able to safely perform their duties and in restoring important services to these impacted areas. In these situations, these utility companies have demonstrated processes for protecting workers related to providing voluntary respirator use and would benefit from avoiding the administrative complexities associated with this regulatory proposal.

Lastly, we recommend moving the exception located in section (f), to the scope section (a), along with the minor edits noted above. Examples of these activities that should be exempted include indoor employees simply traversing from one building to another on a campus or walking to their vehicle. In these situations, where the exposure would only exist for a matter of minutes, the burdens of requirements related to training and the implementation of engineering and

administrative controls outweigh the benefits for those minor exposures for workers that are indoors and protected from wildfire smoke hazards. As mentioned previously in this letter, the emergency was declared for outdoor workers and there is not a demonstrated emergency for indoor workers, who are largely insulated from wildfire smoke.

Current Draft Language with Proposed Language Revisions:

(b) Definitions.

Adjacent Developed Areas.

Realistic Possibility.

Wildlands

Wildland-Urban Interfaces.

Adding additional definitions to terms, such as those listed above, would provide greater clarity and be beneficial to employers and employees as they abide by this new regulation.

Current Draft Language with Proposed Language Revisions:

(e) Training.

The employer shall provide employees with effective ~~training~~ instruction regarding ~~on~~ all of the following:

- (1) Health effects of wildfire smoke.
- (2) The employer's communication system required by subsection (d).
- (3) The right to obtain medical treatment in the event of injury or illness without fear of reprisal.
- (4) How employees can check the AQI at their location.
- (5) Requirements of this section.
- (6) Employer's methods to protect employees from wildfire smoke.
- (7) Importance, limitations, and benefits of using a respirator when exposed to wildfire smoke.
- (8) How to properly put on, use, and maintain the respirators provided by the employer.
- ~~(9) What actions to take if an emergency evacuation of the work area becomes necessary.~~

NOTE: See Appendix A of this section for information required to be included in employee instruction ~~training~~.¹

¹ Appendix A is a placeholder. The content of required instruction ~~training~~ will be spelled out in the appendix after discussions with stakeholders.

SCE requests that the training be referred to as instruction throughout this regulation. Within CalOSHA regulations, the term training typically creates an expectation of classroom-style training with set curriculum and training records. With the unpredictable nature of wildfires, it is much more effective and practical to provide information or instruction to affected workers at the time of the event. Wildfires break out without notice and require immediate reaction and response by many

different industries and employers. To stand down and conduct traditional training is problematic and would lead to a delayed response to important life safety issues, such as the restoration of utilities. Additionally, classroom training can often be less effective than on-the-job instruction, such as in a pre-job briefing. We request the section be changed to require employees to receive instruction on these topics. SCE also requests that (9) be removed from this regulation, as this element would be governed by emergency action plan regulations and is not associated with protection from smoke.

Current Draft Language with Proposed Language Revisions:

(f) Control of harmful exposures to employees.

(1) Engineering Controls. Employee exposures to PM2.5 corresponding to an AQI exceeding 150 shall be ~~prevented~~ reduced to PM2.5 corresponding to an AQI of 150 or less by engineering controls whenever ~~feasible~~ practicable, such as providing enclosed structures or vehicles with effective filtration of PM2.5 for employees to work in.

~~*EXCEPTION to subsection (f)(1). The employer is not required to implement engineering controls for employees who are exposed to PM2.5 corresponding to an AQI exceeding 150 for less than one hour during a shift.*~~

(2) Administrative Controls. Whenever engineering controls are not practicable ~~feasible~~ or do not reduce employee exposures to PM2.5 corresponding to an AQI of 150 or less, administrative controls shall be implemented, if practicable, such as relocating work to a location where the AQI is lower, changing work schedules, reducing work intensity, or providing additional rest periods.

(3) Control by Respiratory Protective Equipment. Where ~~feasible~~ practicable engineering controls and administrative controls fail to eliminate employee exposure to PM2.5 corresponding to an AQI of 150 or less, employers shall comply with the following:

(A) Where the AQI exceeds 150 and is less than 301, the employer shall provide respirators to all employees for voluntary use in accordance with section [5144](#) and encourage employees to use respirators. Respirators shall be NIOSH-approved devices that effectively protect the wearers from inhalation of PM2.5 (such as N95 filtering facepiece respirators). Respirators shall be cleaned, stored, and maintained so that they do not present a health hazard to users. Employers shall use Appendix A to this section in lieu of Appendix D to section 5144 for ~~training~~ instruction regarding voluntary use of respirators.

In addition to moving the exception originally provided in this section to the scope section, as discussed earlier in this letter, we are concerned with the use of the word “feasible” in this section. We say that something is feasible if it can be done. With regard to the issue of feasible engineering controls, one could say that it would be feasible to completely cover, or tent an orchard, field, or jobsite. However, I believe most work agree that it is not practical or practicable. This verbiage would be consistent with

other regulatory standards and work clarify the intent for employees and employers to follow in their processes. Additionally, it is important to remember that wildfire smoke exposure results from emergency conditions. DOSH and the Board are aware, and have demonstrated previously, that these emergency situations require greater flexibility for employers in protecting worker safety and health and relief from administrative and regulatory burden that can slow or hinder emergency response efforts. One example is found in 8 CCR 5141 (c), which provides relief from the typical hierarchy of controls during emergencies, to allow for the use of respiratory protection in those situations. We recommend that DOSH follow this model as a guiding principle in the development of this emergency regulation, as it will allow for the protection of workers without requiring excessive regulatory burden.

Finally, we are concerned with the mandatory requirements provided in the draft standard when AQI PM2.5 is above 301. While we appreciate the importance of protecting workers at these levels, there is much to be learned about application of AQI to worker safety and we believe that these requirements are best omitted from the emergency regulation. These protections should be thoughtfully considered as we collaborate to create the permanent regulation, subsequent to this emergency version.

Again, we appreciate your willingness to hold meaningful dialogue that will lead to the improvement of this proposed regulatory language and the successful implementation of these changes across the state of California. We look forward to continued partnership in these efforts and to the implementation of a regulation that provides important protections for workers and is reasonable, as well as prudent in its design and implementation.

If you require further information on the comments listed above, please do not hesitate to contact me at 626-633-7120 or James.Mackenzie@sce.com.

Sincerely,



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